IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 7808 of 2004

Between:

Y.Vijaya Saraswathi Das S/o Dhilleswara Rao
Residential School , Devarapalli, Vishakapatnam Dist

..... PETITIONER

AND

Andhra Pradesh, Social Welfare
Residential Educational Society, Hyderabad rep by its Secretary, Telugu
Samkshema Bhavan, Masabtank, Hyd

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of writ of Mandamus declaring the action of the respondent in issuing Procg.No.Zone-I/3150/99, dt. 4/08/2003 rejecting the case of the petitioner for posting him as Music Teacher at Sabbavaram or Krishnapuram as highly arbitrary, illegal and voilative of Art. 14,16 and 21 of the constitution of India and consequentially to direct the respondent to accommodate the petitioner as against the post of Music Teacher either at Devarapalli or at Sabbavarm even if necessary by converting the post of drawing teachers as Music Teacher treating it as a special case in the interest of Justice.

Counsel for the Petitioner: MR.P.V.RAMANA

Counsel for the Respondent: MR.VIJAYA BHASKAR MOOLA

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the respondent in issuing Proceedings Rc.No.Zone-I/3150/99, dated 4.8.2003 rejecting the case of the petitioner in posting him as Music Teacher either at Sabbavaram or at Krishnapuram as illegal and arbitrary.

The relevant facts for appreciating the controversy may be stated as under:

The petitioner is a visually blind person by birth. On 8.9.1995, the respondent selected and appointed him against the post of Music Teacher. Initially he was posted at Nakkapalli and thereafter he was transferred to Devarapalli and thereafter to Sabbavaram where he worked for 6 years. Presently, he is working at Devarapalli as Drawing Teacher, which is against his regular post. Then, he filed W.P.No.4212 of 2003, wherein, this Court directed the respondent to consider the petitioner's case for posting him as Music Teacher either at Sabbavaram or at Krishnapuram. Thereafter, the respondent passed orders, dated 4.8.2003 to the effect that there is no sanctioned post of Music Teacher at Sabbavaram and Krishnapuram and the posts of Music Teachers are sanctioned only in Girls'

Institutions, but the Institutions at Sabbavaram and Krishnapuram are Boys' Institutions. The petitioner made his representation on 18.8.2003 to consider his case against the post of Music Teacher either at Sabbavaram or at Krishnapuram. Since he is visually blind by birth and working against the post of Drawing Teacher, the same will not be helpful either to him or to the students. The petitioner further stated that since he worked continuously for 6 years at Sabbavaram and extracted his services as Music Teacher, his services are to be utilized only at Sabbavaram. Hence, the writ petition has been filed.

The respondent filed counter affidavit *inter alia* stating that he has already informed the petitioner in Proc. Rc.No.Zone-1/3150/99, dated 4.8.2003, that there is no sanctioned post of Music Teacher at Sabbavaram and Krishnapuram. It is also informed that the posts of Music Teachers were sanctioned in Girls' Institutions only whereas at Krishnapuram & Sabbavaram there are Boys' Institutions. As per transfer guidelines i.e. Rule 4(b), no teacher should be retained at one place over a period of five years. In compliance of the orders of this Court, the petitioner was informed over phone on 6.6.2003 to appear before the Secretary, APSWREIS, Hyderabad for further posting orders, but the petitioner failed to appear before the Secretary. In spite of giving two opportunities to the petitioner, he could not utilize them and therefore, his case for posting at Sabbavaram or Krishnapuram cannot be considered as there is no sanctioned post of Music Teacher in those schools. Hence, he prays to dismiss the writ petition.

The learned counsel for the petitioner has contended that the petitioner was selected as Music Teacher, but he was transferred to Devarapallia as Drawing Teacher. Since the petitioner is a blind man, the question of teaching drawing does not arise. He has further contended that since he is aged not above 50 years, the question of posting him as Music Teacher at Girls' Institute does not arise.

The learned standing counsel for the respondent has contended that

there are no sanctioned posts of Music Teachers either at Sabbavaram or at Krishnapuram, but they are available only in Girls' Institute and the question of posting him at Girls' Institute does not arise. He has fairly submitted that in the policy decision that has been taken in lifting the ban on transfers, it is mentioned that the case of transfers will be dealt with in the next counselling. If the petitioner participates in the next counselling, then his case can be considered.

There cannot be any dispute that the petitioner cannot have any indefeasible right to post him at a particular place. He is bound by the service rules governing the service conditions. It is the specific case of the respondent that no posts of Music Teachers are available in the Boys' Institute. Therefore, the question of posting the petitioner at Girls' Institute does not arise inasmuch as even according to the learned counsel for the petitioner, in view of the fact that as per G.O.Rt.No.272, dated 7.6.2003, when a person does not cross 50 years, he cannot be posted at Girls' Institute. Therefore, an appropriate decision has to be taken by the respondent in accordance with law in the next counselling.

Hence, without expressing any opinion on the merits of the case, I consider it appropriate to direct the respondent to consider the petitioner's case in transferring him to any other place in the next counselling.

The writ petition is disposed of in terms of the above direction. In the circumstances of the case, there shall be no order as to costs.

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(K.C. BHANU, J.)

21st June, 2005

bcj

To

1 The Secretary, Andhra Pradesh, Social Welfare
Residential Educational Society, Telugu Samkshema

Bhavan, Masabtank, Hyderabad

2 Two C.D. copies.